

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

IPFS CORPORATION, a Missouri)
 Corporation,)
)
 Plaintiff,)
 vs.)
)
 LORRAINE CARRILLO, an individual,)
)
 Defendant.)

Case No.: 2:14-cv-00509-GMN-GWF

ORDER

Pending before the Court are the following: (1) Reply to Response to Motion for Preliminary Injunction (ECF No. 13) filed by Plaintiff IPFS Corporation (“Plaintiff”), (2) Plaintiff’s Notice of Corrected Image/Document re: Reply to Response to Motion for Preliminary Injunction (ECF No. 15), (3) Motion to Strike Reply to Response to Motion for Preliminary Injunction (ECF No. 24) filed by Defendant Lorraine Carrillo (“Defendant”), and (4) Defendant’s Motion to Strike Affidavit of Rachel Yunk (ECF No. 35).

I. BACKGROUND

Plaintiff filed its Motion for Temporary Restraining Order (ECF No. 9) and Motion for Preliminary Injunction (ECF No. 10) on April 9, 2014. On April 10, 2014, Defendant filed her Response to the Motion for Temporary Restraining Order (ECF No. 11), which states, “This Response is limited to [Plaintiff]’s request for a temporary restraining order; [Defendant] will file a separate response to [Plaintiff]’s alternative request for a preliminary injunction.” (1:24–27.)

On April 21, 2014, Plaintiff filed its Reply to Response to Motion for Temporary Restraining Order (ECF No. 12) and Reply to Response to Motion for Preliminary Injunction (ECF No. 13). The following day, April 22, 2014, Plaintiff filed two Notices

1 of Corrected Image/Document (ECF Nos. 14, 15) to correct the prior version of its Reply.
2 (ECF Nos. 12, 13.)

3 Six days later, on April 28, 2014, Defendant filed her Response to the Motion for
4 Preliminary Injunction (ECF No. 19), stating that this response was related only to
5 Plaintiff's Motion for Preliminary Injunction. (*Id.* at 1:22–23.) Plaintiff filed its Reply
6 (ECF No. 20) to Defendant's newly filed Response on May 8, 2014. Defendant then
7 filed a Motion to Strike this reply (ECF No. 24), stating, "Plaintiff has filed three briefs in
8 support of its Motion for Preliminary Injunction: the motion [ECF No. 10], a reply [ECF
9 No. 13], and a second reply [ECF No. 20]. The second reply amounts to an improper
10 surreply, which must be stricken." (Mot. to Strike 1:26–28, ECF No. 24.)

11 Plaintiff also filed the Affidavit of Rachel Yunk regarding Motions for Temporary
12 Restraining Order and Preliminary Injunction (ECF No. 32) on June 6, 2014. This new
13 affidavit purports to supplement Yunk's April 3, 2014 affidavit (ECF No. 1, Ex. B). On
14 June 11, 2014, Defendant filed a Motion to Strike this affidavit (ECF No. 35), claiming
15 that it is "procedurally improper" as it was filed "nearly six weeks after briefing on the
16 motions to which it relates was completed." (Mot. to Strike 1:21–23, ECF No. 35.)

17 **II. DISCUSSION**

18 **A. Defendant's Motion to Strike Plaintiff's Reply**

19 As mentioned above, on April 21, 2014, Plaintiff filed both a Reply to Response to
20 its Motion for Temporary Restraining Order (ECF No. 12) and a Reply to Response to its
21 Motion for Preliminary Injunction (ECF No. 13). However, it appears to the Court that
22 these documents are identical. Furthermore, at the time Plaintiff filed its Reply to
23 Response to its Motion for Preliminary Injunction (ECF No. 13), Defendant had not yet
24 filed a Response to Plaintiff's Motion for Preliminary Injunction. In fact, Defendant did
25 not file her Response to the Motion for Preliminary Injunction until April 28, one week

1 *after* Plaintiff purported to file its Reply. (*See* Resp. to Mot. for Prelim. Inj., ECF No. 19.)
2 Therefore, the Court will strike this premature Reply (ECF No. 13) and its Corrected
3 Version (ECF No. 15). Accordingly, the Court denies Defendant's Motion to Strike
4 (ECF No. 24), as there is now only one reply by Plaintiff (ECF No. 20) in support of its
5 Motion for Preliminary Injunction.

6 **B. Defendant's Motion to Strike the Yunk Affidavit filed by Plaintiff**

7 Defendant also requests that the Court strike the Affidavit of Rachel Yunk ("Yunk
8 Affidavit") that Plaintiff filed. (ECF No. 35.) According to the docket entry, Plaintiff
9 filed this affidavit (ECF No. 32) with the intention to provide support for Plaintiff's
10 Motion for Temporary Restraining Order (ECF No. 9) and Motion for Preliminary
11 Injunction (ECF No. 10). However, because the supporting affidavit was not served with
12 those motions, it violates Rule 6(c)(2) of the Federal Rules of Civil Procedure.

13 Alternatively, the affidavit could have been filed with Plaintiff's Reply (ECF Nos. 12,
14 13), but it was not. Instead, it was submitted separately on June 6, six weeks after the
15 filing deadline for Plaintiff's Reply, April 20. As such, the affidavit is untimely pursuant
16 to Local Rule 7-2(c), which requires that "reply points and authorities shall be filed and
17 served by the moving party seven (7) days after service of the response" and Federal Rule
18 of Civil Procedure 6(d), which provides a three-day extension for the reply if filed
19 electronically.

20 Additionally, because the affidavit purports to be "a supplement to [Rachel
21 Yunk's] earlier affidavit, dated April 3, 2014, which was incorporated in the Verified
22 Complaint," it is procedurally improper. (Supplemental Aff. ¶ 2, ECF No. 32.) If
23 Plaintiff wished to amend its Complaint, it should have filed a motion to amend its
24 pleading and attached the proposed amended pleading, pursuant to Local Rule 15-1.

1 Because Plaintiff failed to do so, the Court hereby grants Defendant's Motion (ECF No.
2 35) and strikes the Yunk Affidavit (ECF No. 32).


3 **III. CONCLUSION**

4 **IT IS HEREBY ORDERED** that Defendant's Motion to Strike Reply to
5 Response to Motion for Preliminary Injunction (ECF No. 24) is **DENIED**.

6 **IT IS FURTHER ORDERED** that Defendant's Motion to Strike the Affidavit of
7 Rachel Yunk (ECF No. 35) is **GRANTED**.

8 **IT IS FURTHER ORDERED** that Plaintiff's duplicative Responses (ECF Nos.
9 13, 15) are **STRICKEN**.

10 DATED this 27 day of June, 2014

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14 Gloria M. Navarro, Chief Judge
15 United States District Judge
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